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November 24, 2003

***Via Hand Delivery and E-Mail***

Amy Swanson, Esq.  
Legal Enforcement Program  
United States EPA, Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

Re: Hecla Mining Co., Docket No. RCRA-8-99-06, Response to EPA Comment and Revisions to Draft RCRA 7003 Consent Order

Dear Ms. Swanson:

Thank you for your letter of October 6, 2003, and enclosed draft RCRA § 7003 order (the "Order"). As I confirmed with you by telephone recently, I have reviewed the substance of your letter and the Order with my client, Hecla Mining Co. (Hecla). Hecla has also recently responded to EPA technical comments on Hecla's proposed closure work plan for Pond 2 at the Apex Site by letter of October 28, 2003, from Hecla's Project Manager, Mr. Chris Gypton, to EPA's Project Manager, Mr. Eric Johnson. Hecla appreciates EPA's many areas of agreement on specific language in the revised draft Order, and given our progress in finalizing both the Order and closure work plan, is hopeful a final agreement to proceed with the planned Pond 2 closure can be reached very soon. One basic issue remains to be resolved within the proposed Order, as set forth more specifically below.

As you noted in your last letter, two main areas of continued disagreement have concerned (1) the possible performance of additional activities under the order and language in the order, and (2) characterizing the pond and its contents as harmful. While we can agree with your last revised draft Order concerning the use of "language characterizing the pond and its contents as harmful," we remain very concerned about EPA's apparent insistence upon *unlimited* authority to require additional activity at the site. Hecla will simply not consent to an order allowing EPA to unilaterally change the work to be performed. Alternatively, Hecla proposed a Closure Plan as an attachment to the Order. As explained below, this approach is fair to both parties and EPA has previously approved this concept.

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With respect to the "additional work" issue, you have stated that the inclusion of language pertaining to additional tasks is "necessary to provide EPA with the appropriate authority in this particular document to act in the event of unforeseen problems." Further, you assert that "[w]ithout this language, EPA would have to initiate a new and separate action to address problems resulting from performance of the consent order," and that "[s]uch efforts would be untimely and burdensome." Hecla respectfully disagrees with these statements of position, and points to language in your letter of February 12, 2002 regarding this matter in which EPA acknowledges the strong prospect for being able to finalize a closure work plan simultaneous with finalization of a RCRA § 7003 consent order, thus eliminating the need for an open-ended obligation to perform work not yet defined or approved. February 12, 2002 letter at 2, ¶ at Para.1. Indeed, Hecla has consistently asserted the need to define the work to be performed so as to limit Hecla's obligation appropriately under any RCRA § 7003 consent order. This position is certainly reconcilable with EPA's asserted need to "address problems resulting from the performance of the consent order," but cannot be reconciled with an unlimited additional work authority under the order. Problems sufficiently related to and resulting from performance of a previously approved and agreed upon closure work plan constitute an acceptable category of "additional work." It is the unfettered ability of EPA under the proposed language to require additional work not "resulting from performance of the consent order," or otherwise not consistent with or necessary to the proper performance of the closure work plan that remains unacceptable to Hecla. Indeed, Hecla believes it would be entirely appropriate that EPA be required to issue a separate, additional order for matters not resulting from or necessary to completion of the consent order/closure work plan, and Hecla has no objection to EPA reserving the right to do so, as provided in the Order. Accordingly, language of limitation on EPA's ability to require additional work remains in dispute, and is highlighted in the attached revised draft Order. All language deemed acceptable by Hecla is no longer highlighted, underscored or stricken through, and appears as normal text.

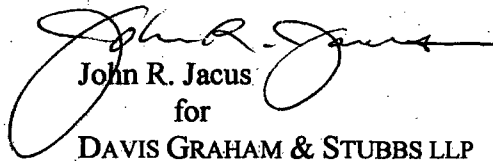
The language of the Order most affected by this remaining difference in our respective positions is located in paragraphs 63 and 64, at page 11. Please note that our proposed language contemplates an EPA-approved closure work plan being attached to the Order prior to its execution, thus rendering language regarding the work plan's requirements largely unnecessary; however, that language has been retained as an additional accommodation of EPA's position.

Given the favorable facility inspection on September 24, 2003, as well as the findings and conclusions of the October 2001 site visit and associated site data, Hecla proposes that the enclosed Order be finalized as proposed herein and executed shortly following final approval of a mutually acceptable closure work plan. On this basis, Hecla is prepared to proceed to implement closure of Pond 2 at the Apex Site during the next construction season.

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Please contact me at your convenience to schedule a conference call to discuss this issue and any other aspects of the revised Order.

Very truly yours,

  
John R. Jacus  
for  
DAVIS GRAHAM & STUBBS LLP

Attorneys for Hecla Mining Co.

cc: John N. Galbavy, Esq. – Hecla (w/enc., via U. S. Mail)  
Mr. Chris Gypton – Hecla (w/enc., via U. S. Mail)  
Enclosure  
JRJ/sas